

(2014) 08 GUJ CK 0019

In the Gujarat High Court

Case No : Special Civil Application No. 10263 of 2014

Nayanbhai Kishorbhai Kayastha

APPELLANT

Vs

State of Gujarat

RESPONDENT

Date of Decision : 28-08-2014

Acts Referred:

Constitution of India, 1950 — Article 226

Gujarat Prevention of Anti-social Activities Act, 1985 — Section 2(b), 3(1)

Citation : (2014) 08 GUJ CK 0019

Hon'ble Judges : A.J. Desai, J

Bench : Single Bench

Advocate : H.R. Prajapati, Advocate for the Appellant; Bipin Bhatt, Assistant Government Pleader, Advocate for the Respondent

Judgement

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A.J. Desai, J.—Affidavit-in-reply filed on behalf of respondent no. 2 is taken on record.

2. This petition is directed against the order of detention dated 27.03.2014 passed by respondent No. 2-The District Magistrate, Bharuch in exercise of powers conferred under Section 3(1) of the Gujarat Prevention of Anti Social Activities Act, 1985 (in short "the PASA Act") by detaining the detainee as a "bootlegger" as defined under Section 2(b) of the Act. Along with the order of detention, the detainee is also served with the grounds of detention. In the grounds of detention, there is a reference to two criminal cases pending against the detainee. The cases are registered under the provisions of the Bombay Prohibition Act.

3. Mr. H.R. Prajapati, learned advocate for the detainee submits that registration of FIR itself cannot lead to disturbance of even tempo of public life and therefore the public order. The order of detention is assailed by the detainee on various grounds mentioned in the memo of the petition. However, learned advocate for

the detinue submits that, except FIR registered under the Bombay Prohibition Act, there was no other material before the detaining authority whereby it could be inferred reasonably that the detinue is a "bootlegger" within the meaning of Section 2(b) of the Act and required to be detained as the detinue's activities are prejudicial to the maintenance of public health and public order. In support of the above submission, learned advocate for the detinue has placed reliance on judgment of the Apex Court in the case of Piyush Kantilal Mehta Vs. Commissioner of Police, Ahmedabad City and Another, and the recent judgment dated 28.3.2011 passed by the Division Bench of this Court [Coram: S.J. Mukhopadhaya C.J. & J.B. Pardiwala, J].] in Letters Patent Appeal No. 2732 of 2010 in Special Civil Application No. 9492 of 2010 (Aartiben vs. Commissioner of Police) which would squarely help the detinue.

4. Mr. Bipin Bhatt, learned Assistant Government Pleader submitted that registration of FIR would go to show that the detinue had, in fact, indulged into such activities, which can be said to be disturbing the public health and public order and in view of sufficient material before the detaining authority to pass the order of detention, no interference is called for by this Court in exercise of its power under Article 226 of the Constitution of India.

5. Having heard the rival submissions of the parties and perused the record of the case, I am of the view that FIR registered under the Bombay Prohibition Act alone cannot be said to be sufficient enough to arrive at subjective satisfaction to the effect that the activities, as alleged, are prejudicial to the public order or lead to disturbance of public order. There has to be nexus and link for such activities with disturbance of the public order. On careful perusal of the material available on record and the ratio laid down by the Apex Court in the case of Piyush Kantilal Mehta (supra) and the recent judgment dated 28.3.2011 passed by the Division Bench of this Court [Coram: S.J. Mukhopadhaya C.J. & J.B. Pardiwala, J].] in Letters Patent Appeal No. 2732 of 2010 in Special Civil Application No. 9492 of 2010 (Aartiben vs. Commissioner of Police), I am of the view that the activities of the detinue cannot be said to be in any manner prejudicial to the public order and therefore, the order of detention passed by the detaining authority cannot be sustained and is required to be quashed and set aside.

6. In the result, this Special Civil Application is allowed. The impugned order of detention dated 27.03.2014 passed by respondent No. 2-The District Magistrate, Bharuch is hereby quashed and set aside. The detinue is ordered to be set at liberty forthwith if he is not required to be detained in connection with any other case. Rule is made absolute accordingly. Direct service is permitted.